

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 453 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

UMEDRAM M TRIVEDI

Versus

RAMIBEN WD/O SOMABHAI BHAKUBHI

Appearance:

MR NR TANDEL for Petitioner

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/07/2000

ORAL JUDGEMENT

This is a Civil Revision Application filed u/s
29(2) of the Bombay Rents, Hotel and Lodging House Rates
(Control) Act, 1947 (hereinafter to be referred to as the
Bombay Rent Act) by the original defendant/tenant
challenging the correctness, legality, propriety and

regularity of the judgement Exh.21 dated 2nd July 1985 rendered by the learned District Judge, Valsad at Navsari, (who will be referred to as "the appellate Judge") in Regular Civil Appeal NO.57 of 1984 whereby he was pleased to confirm the decree of eviction passed by the Joint Civil Judge (J.D.), J.M.F.C. at Gandevi (who will be referred to as "the learned Judge of the trial Court") by rendering his judgement Exh.53 dated 30.4.1984 in Regular Civil Suit NO.46 of 1977.

2 Here in this Civil Revision Application the original defendant/tenant is the Revision-Petitioner while original plaintiff/landlord is the Revision-Opponent. For the sake of convenience, parties will be referred to hereinafter as the plaintiff and defendant, respectively.

3 The facts leading to this Civil Revision Application No.453 of 1986 in a nutshell are as follows:-

The plaintiff is an owner of the suit premises bearing Property No.850 situated in the town of Gandevi. The said suit property was let out to the present defendant in the year 1965 for monthly rent of Rs.25/-. It is the case of the plaintiff that the defendant had become tenant-in-arrears of rent for more than six months and he neglected to pay the rent due within one month from the date of service of the notice. After serving the said notice dated 11.3.1976, the plaintiff filed Regular Civil Suit No.46 of 1977 in the court of the learned Judge of the trial Court. In that suit the plaintiff had prayed for a decree of eviction of suit premises together with a money decree to recover Rs.1,375/- from defendant/tenant.

5 In that suit defendant appeared before the trial Court and submitted the written statement exh.9 and contested the suit. One of the main contentions of the defendant was that he is not a tenant-in-arrears of rent for more than six months and that there is a dispute with regard to standard rent and that dispute is required to be decided at the earliest. IT is further the case of the defendant/tenant that he has filed on Rent Petition No.16 of 1976 and as per the order of the Court he has paid the interim rent in the Court. He has further averred that he is/was ready and willing to pay the rent but the plaintiff did not accept the same.

6 The learned judge of the trial Court framed the necessary issues at exh.13. Both the parties led oral as well as written evidence. And after hearing the

arguments of the learned advocates for both the parties and after appreciating the evidence led by both the parties, the learned judge of the trial Court was pleased to come to a conclusion that the plaintiff has proved that the defendant is a tenant-in-arrears of rent for more than six months and he has neglected to make the payment of such arrears of rent within one month from the date of receipt of the notice. The learned judge of the trial Court by his judgement Exh.53 dated 30.4.1984 passed a decree of eviction in favour of the plaintiff in Regular Civil Suit No.46 of 1977. The learned Judge of the trial Court also passed a money decree in favour of the plaintiff to recover Rs.1,375/from the defendant together with costs of the suit.

7. Being aggrieved against and dissatisfied with the said judgement of the learned judge of the trial Court, the original defendant/tenant preferred Regular Civil Appeal No.57 of 1984 in the District Court, Valsad at Navsari. The learned District Judge after hearing the arguments of the learned Advocates for both the parties and after perusing the record and proceeding of the suit and after appreciating the evidence led by both the parties, by rendering a judgement dated 2nd July 1985 dismissed the appeal preferred by the defendant/tenant and confirmed the judgement of the trial Court.

8. Being aggrieved against and dissatisfied with the said judgement of the learned Appellate Judge, the original defendant/tenant has preferred this Civil Revision Application under Section 29(2) of the Bombay Rent Act.

9. I have heard Mr M.R. Tandel, the learned advocate for the Revision-Petitioner and Mr R.N.Shah, the learned advocate for the Revision-Opponent in detail at length. Shri N.R. Tandel has taken this Court though the judgement challenged in this Revision Application.

Before considering the contentions of the rival parties, it is necessary to place on record the legal position with regard to scope and ambit of revision application u/s 29(2) of the Bombay Rent Act. As held in the case of PATEL VALMIK HIMATLAL & ORS. v. PATEL MOHANLAL MULJIBHAI reported in (1998) 7 SCC 383, the powers u/s 29(2) of the Bombay Rent Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with

the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction and High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence.

10 Shri M.R. Tandel for the Revision-Petitioner has argued that here in this case the defendant-tenant had already taken a dispute with regard to standard rent in his written statement and the landlady was not accepting the rent. He has further argued that even today the defendant is ready and willing to pay the rent. Shri R.N.Shah, the learned advocate for the revision-opponent has argued that legal position with regard to the dispute of standard rent is now settled by the Hon'ble Supreme Court. If tenant wants to take a dispute with regard to standard rent, he is required to take such dispute within one month from the date of notice and further that such dispute with regard to standard rent can only be taken by filing a separate application under Section 11(4) of the Bombay Rent Act and that too also within one month from the date of the notice. Here, in this case defendant/tenant has taken a dispute merely in the written statement and that too after one month from the date of the receipt of the notice and therefore that dispute cannot be taken as a genuine dispute with regard to standard rent and therefore this contention is devoid of merits.

11 The second contention is with regard to readiness and willingness to pay rent. Shri R.N.Shah the learned advocate for the Revision-Opponent has submitted that even during the pendency of the Revision Application, the defendant has not paid any single paisa towards rent which has already become due from the defendant to the plaintiff. Shri N.R.Tandel has made a statement at Bar that previously the defendant - tenant was depositing the rent in the trial Court but he has no information with regard to the latest position with regard to deposit of the rent in the trial Court during the pendency of the Civil Revision Application.

12 The third contention of the Revision-Petitioner is to the effect that the defendant was paying the rent to the landlady but she was refusing to accept the same. This contention is with regard to a pure question of fact. Both the Courts have negatived the defence of the defendant on this point. This Court cannot reappreciate

the evidence on this point. Except above three contentions, no other contention is taken by Mr M.R. Tandel. This Court finds that the judgement of the Appellate Court is according to law and there is no error to disturb the finding of the Appellate Judge. This Revision Application deserves to be dismissed and therefore accordingly, it is dismissed.

13 Shri N.R.Tandel, the learned advocate for the Revision-Petitioner requested this Court to grant time of one year to the defendant-tenant so as to enable him to find out alternative residential accommodation. Shri R.N. Shah has objected to this prayer. Still however, having considered the facts and circumstances of the case, this Court deems it fit that some reasonable time should be given to the defendant so that he can find out alternative accommodation. I therefore grant six months' time to the defendant-tenant to vacate the suit premises as per the decree of the trial Court which is confirmed by the appellate Court. This time of six months is granted subject to the defendant fulfilling the usual terms and conditions by giving an undertaking supported with affidavit.

Rule is discharged with no order as to costs.
Interim relief granted on 30.06.1986 is vacated.

(mohd)